

PORZIO BROMBERG & NEWMAN P.C.

Brett S. Moore (BM-0014)
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New York, New York 10019-3800
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(212) 957-3983 (fax)

Attorneys for Defendants Luxalpha Sicav as represented by its Liquidators Maitre Alain Rukavina and Paul Laplume, Maitre Alain Rukavina and Paul Laplume, in their capacities as liquidators and representatives of Luxalpha Sicav

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES INVESTOR PROTECTION
CORPORATION,**

Plaintiff,

-v-

**BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC.**

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

**IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,**

Adv. Pro. No. 10-04285 (SMB)

Plaintiff,

-v-

UBS AG, et al.

Defendants.

**SUPPLEMENTAL DECLARATION OF BRETT S. MOORE IN
SUPPORT OF LUXALPHA'S CROSS-MOTION FOR CLAIM
DETERMINATION AND ALLOWANCE**

I, Brett S. Moore, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a principal of the law firm of Porzio Bromberg & Newman P.C. ("Porzio"), counsel to Defendants Luxalpha Sicav ("Luxalpha") as represented by its Liquidators Maitre Alain Rukavina and Mr. Paul Laplume, and Maitre Alain Rukavina and Mr. Paul Laplume, in their capacities as liquidators and representatives of Luxalpha Sicav (collectively, the "Liquidators" and together with Luxalpha, the "Defendants"). Porzio maintains offices for the practice of law at, among other places, 156 West 56th Street, Suite 803, New York, New York 10019. I have been duly admitted to practice in the State of New York and the United States District Court for the Southern District of New York.

2. I submit this supplemental declaration in support of Luxalpha's cross-motion for claim determination and allowance (the "Cross-Motion") [ECF No. 251].

3. Attached hereto as **Exhibit 1** are true excerpts of the transcript from the hearing held on September 19, 2019 in Picard v. Alpha Prime Limited, et al., Adv. Pro. No. 09-01364 (SMB) (Bankr. S.D.N.Y.), ECF No. 569.

4. Attached hereto as **Exhibit 2** is a true copy of one of the customer claims along with its Exhibit 1 that was timely filed with the BLMIS liquidation on behalf of Luxalpha.

I hereby declare under penalty of perjury that the foregoing statements are true and correct.
Executed on the 18th day of May, 2020, at New York, New York.

/s/ Brett S. Moore
Brett S. Moore

EXHIBIT 1

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01789-smb

4 Adv. Case No. 09-01364-smb

5 - - - - - x

6 In the Matter of:

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8 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC,

9

10 Debtor.

11 - - - - - x

12 IRIVNG H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

13 MADOFF SECURITIES LLC,

14 Plaintiff-Applicant,

15 v.

16 ALPHA PRIME FUND LIMITED et al.,

17 Defendant.

18 - - - - - x

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1 U.S. Bankruptcy Court
2 One Bowling Green
3 New York, NY 10004

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B E F O R E :

HON STUART M. BERNSTEIN

U.S. BANKRUPTCY JUDGE

ECRO: JONATHAN

Page 3

1 Hearing re: Trustee's Motion for Leave to Amend and to Sever

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3 Hearing re: Alpha Prime Fund's motion for Judgment on the

4 Pleadings

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 BAKER HOSTETLER

4 Attorneys for the Trustee

5 45 Rockefeller Plaza

6 New York, NY 10111

7

8 BY: MICHELLE R. USITALO

9 TATIANA MARKEL

10 OREN J. WARSHAVSKY

11

12 DUFFY AMEDEO

13 Attorneys for Alpha Asset Management - Plaintiff

14 275 Seventh Avenue

15 7th Floor

16 New York, NY 10001

17

18 BY: DOUGLAS A. AMEDEO

19 TODD E. DUFFY

20

21

22

23

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Page 5

1 CLEARY GOTTLIEB STEEN & HAMILTON LLP
2 Attorneys for HSBC Defendant
3 One Liberty Plaza
4 New York, NY 10006
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6 BY: DAVID Z. SCHWARTZ
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1 subordinate its customer claim. Following a 2018 partial
2 settlement, pursuant to which the Trustee agreed to allow
3 Alpha Prime's customer claim in the approximate amount of
4 \$238 million, and Alpha Prime agreed to repay the two-year
5 transfers in the amount of \$76,450,000 from its
6 distribution.

7 Alpha Prime moved for judgment on the pleadings in
8 connection with the unsettled claims. The Trustee cross-
9 moved for leave to file a second amended complaint to
10 recover the transfers from BLMIS during years three through
11 six, which I'll refer to as the remaining transfers, and to
12 equitably subordinate any claims based on settlement payment
13 already made by Alpha Prime.

14 The Trustee also seeks other relief including
15 equitable subordination. The main issue is whether the
16 proposed second amended complaint or PSAC adequately alleges
17 that Alpha Prime had actual knowledge that BLMIS was not
18 trading securities. I conclude that it does.

19 Accordingly, the motion for leave to file that
20 PSAC has granted, the motion for judgment on the pleadings
21 directed at the superseded 2010 amended complaint is denied.
22 The issue regarding the status or priority of Alpha Prime's
23 claim under Section 502H is premature because right now,
24 it's subject to disallowance under Bankruptcy Code Section
25 502D.

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1 significant financial risk. As long as people continued to
2 invest in these funds, and BLMIS continued to report
3 profits, which increased the value of their funds, they
4 continued to make a lot of money. BLMIS had been their cash
5 cow for over a decade, and they had a motive to ignore the
6 Ponzi scheme and the opportunity to profit from it.

7 Accordingly, the PSAC plausibly alleges that Alpha
8 Prime knew that BLMIS was not trading securities based on
9 the knowledge imputed to Alpha Prime from Kohn, Fielding,
10 Zapotocky and Radel, as well as others. For the same reason
11 it adequately alleges a claim sounding inequitable
12 subordination.

13 The Trustee's motion is granted without prejudice
14 for future arguments regarding the status and the priority
15 of Section 502H, and for the reasons I've stated, I am
16 denying the Severance Motion without prejudice. The Court
17 is considered the party's remaining arguments and concludes
18 that they lack merit or are mooted by the disposition of the
19 motion, (indiscernible) on notice. Thank you.

20 MS. MARKEL: Thank you, Your Honor.

21 MR. DUFFY: Thank you, Your Honor.

22 (Whereupon these proceedings were concluded at
23 11:33 AM)

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certified that the foregoing
4 transcript is a true and accurate record of the proceedings.

5

6 Sonya
7 Landanski
8 Hyde



Digitally signed by Sonya
Landanski Hyde
DN: cn=Sonya Landanski Hyde, o,
ou, email=digital1@veritext.com,
c=US
Date: 2019.09.20 16:29:47 -04'00'

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20 Veritext Legal Solutions

21 330 Old Country Road

22 Suite 300

23 Mineola, NY 11501

24

25 Date: September 20, 2019

EXHIBIT 2

LUXALPHA SICAV

Société d'Investissement à Capital Variable

Registered Office: 33A avenue J.F. Kennedy, L-1855 Luxembourg

Register of Commerce: Luxembourg: B 98.884

Commission de Surveillance du Secteur Financier
à l'attention de Mme Irmine Greischler
Conseillère de direction 1^{ère} Classe et
Monsieur Jean-Paul Heger
Attaché de Direction
110, route d'Arlon
L-1150 Luxembourg

C S S F		
D1	D2	D3
MWE		AUD
GF	03 MARS 2009	SEC
JMG		CI
SGE	S1	S2
S6	S7	S8
	S9	S10

Luxembourg, le 2 mars 2009

Luxalpha Sicav

Votre Référence: OPC.09/3211-CST/CST 3665 D2

Chère Madame,
Cher Monsieur,

En référence à votre lettre du 26 février 2009, nous vous faisons parvenir, ci-joint, une copie complète du Customer Claim déposée dans le contexte de l'affaire liée à Bernard L. Madoff. Ce document a été envoyé le 27 février 2009 à Irving H. Picard, Esa., le trustee de Bernard Investment Madoff-Securities LLC.

Comme convenu dans notre courrier du 26 février 2009, nous vous adressons en annexe une copie de la version finalisée du Customer Claim.

Restant bien volontiers à votre disposition, nous vous prions de croire, chère Madame, cher Monsieur, à l'expression de nos salutations les plus distinguées.

Au nom de tous les membres du Conseil d'Administration

Ralf Schroeter
Administrateur

Alain Hondequin
Administrateur

Annexes : mentionnées

03 MARS 2009

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

(Please print or type)

Name of Customer: LUXALPHA SICAV
Mailing Address: 33A, AVENUE J.F. KENNEDY

City: LUXEMBOURG State: LUXEMBOURG Zip: L-1855

Account No.: 1-FR108-3-0

Taxpayer I.D. Number (Social Security No.): NOT APPLICABLE

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of December 11, 2008:

- a. The Broker owes me a Credit (Cr.) Balance of \$ 1,537,099,731¹
- b. I owe the Broker a Debit (Dr.) Balance of \$ NONE
- c. If you wish to repay the Debit Balance, please insert the amount you wish to repay and attach a check payable to "Irving H. Picard, Esq., Trustee for Bernard L. Madoff Investment Securities LLC." If you wish to make a payment, it must be enclosed with this claim form. \$ NONE
d. If balance is zero, insert "None." \$ \$1,537,099,731

¹ See Exhibit 1, point 1.

2. **Claim for securities as of December 11, 2008**

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION

	<u>YES</u>	<u>NO</u>
a. The Broker owes me securities	<u>X</u>	
b. I owe the Broker securities		<u>X</u>
c. If yes to either, please list below:		

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	<u> </u>	<u>X</u>
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	<u> </u>	<u>X</u>
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	<u> </u>	<u>X</u>
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	<u> </u>	<u>X</u>
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	<u> </u>	<u>X²</u>
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	<u> </u>	<u>X</u>
9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker.	<u> </u>	<u>X</u>
<p>Please list the full name and address of anyone assisting you in the preparation of this claim form: <u>Christopher Green, Ropes & Gray, One International Place, Boston, MA 02110-2624</u></p>		

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

**IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM.
CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR
IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.**

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Date 27.02.2009 Signature 
R. SCHREITER
Date 27.02.2009 Signature 
A. LEON DE QUIRE Director

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

**This customer claim form must be completed and mailed promptly,
together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

Exhibit 1 - Account Statement

1. The amount of USD 1,537,099,731 includes the amount of USD 213,247,587.07 indicated as cash balance on page 17 on the last account statement for account 1-FR108-3-0 (the **Account**) sent by Bernard L. Madoff Investment Securities LLC on November 30, 2008, and attached as Exhibit 2 (the **Account Statement**), and the amount of USD 1,323,852,143.93 indicated on page 19 of the Account Statement as market value of the securities held by Bernard L. Madoff Investment Securities LLC on behalf of LUXALPHA SICAV. Claimant reserves the right to supplement this customer claim, as necessary.
2. LUXALPHA SICAV was informed by its legal advisors that the Securities Investor Protection Act Trustee has not found any securities purchased on behalf of customers for at least the past thirteen years and does not expect to discover any such securities. Accordingly, the Trustee has reported that he does not foresee any valid claims for securities. To the extent that any valid securities claims exist due to any future recovery by the Trustee of securities, or otherwise, Claimant expressly claims any and all such securities purchased for its benefit, including, but not limited to, those securities identified on the Account Statement.

In addition to the claims for money balances and/or securities on pages one and two of this customer claim, Claimant expressly states a customer claim for any amounts redeemed by Claimant prior to the commencement of the liquidation of Bernard L. Madoff Investment Securities LLC to the extent such redemptions are avoided or otherwise recovered by the Trustee pursuant to 11 U.S.C. § 550 and/or other applicable laws. Any such amounts would be in addition to the amounts set forth in point 1 above.

3. This customer claim for the Account (1-FR108-3-0) is lodged on behalf of the beneficial owner of the Account, LUXALPHA SICAV, a Luxembourg company with registered seat at 33a, Avenue J. F. Kennedy in L-1855 Luxembourg. LUXALPHA SICAV is a Luxembourg based fund whose agent and custodian is UBS (Luxembourg) SA (the **Custodian**), with registered seat at 33a, Avenue J.F. Kennedy in L-1855 Luxembourg. We understand that the Custodian merely in its function as agent and custodian has also lodged a customer claim on behalf of LUXALPHA SICAV, who is the sole beneficial owner, for the Account.

For your information, you will find enclosed as Exhibit 3 a copy of (i) LUXALPHA SICAV's prospectus, (ii) LUXALPHA SICAV's articles of association, (iii) the custodian agreement between LUXALPHA SICAV and the Custodian and (iv) the Sub-Custodian Agreement between the Custodian and Bernard L. Madoff Investment Securities LLC.

Customer Claim against Bernard L. Madoff Investment Securities LLC – LUXALPHA SICAV
(account number 1-FR108-3-0)